

ALTERNATIVE DISPUTE RESOLUTION (ADR) ANNUAL REPORT

FISCAL YEAR 2009

REPORTING COMPONENT Department of the Army

REPORT CONTROL SYMBOL
DD-GC(A)2099

Please adhere to the definitions on pages 3 and 4 or, in the alternative, provide your Component's definition in the Narrative section on page 2.

Does your Component handle EEO cases?

YES

NO

--If YES, attach a copy of the relevant EEOC Form 462.

--If copy is attached, only complete the EEO column below if numbers differ from the EEO Form.

Does your Component engage in environmental conflict resolution (ECR)?

YES

NO

--If YES, attach a copy of the OMB-CEQ form.

	EEO (If different from EEOC Form 462)	WORKPLACE (Labor- Management)	WORKPLACE (Other)	ACQUISITION	CLAIMS	OTHER (Do not include ECR or EEO reporting)	TOTAL NUMBER OF ADR EVENTS BY PROCESS
CONCILIATION			9				9
MEDIATION	5	7	18	2		24	56
EARLY NEUTRAL EVALUATION		1	1				2
NON-BINDING ARBITRATION							0
SETTLEMENT JUDGE/ CONFERENCE	7		9	2		44	62
FACTFINDING							0
REVIEW PANEL		16					16
OTHER				47			47
TOTAL NUMBER OF ADR EVENTS BY SUBJECT MATTER	12	24	37	51		68	192
NUMBER OF RESOLUTIONS REACHED BY ADR	5	14	31	50		55	155
PERCENTAGE OF ADR CASES RESOLVED BY ADR	42%	58%	84%	98%		81%	81%

	EEO (If different from EEOC Form 462)	WORKPLACE (Labor- Management)	WORKPLACE (Other)	ACQUISITION	CLAIMS	OTHER (Do not include ECR or EEO reporting)	TOTAL NUMBER OF ADR EVENTS BY PROCESS
FACILITATION		8	3				11
OMBUDSMAN		17				6902	6919
PARTNERING							
BINDING ARBITRATION		53					53
SUMMARY TRIAL W/ BINDING DECISION				2			2

LIST SPECIFIC ACTIONS TAKEN THIS FISCAL YEAR TO ENCOURAGE THE CONSIDERATION AND/OR USE OF ADR AND/OR CONFLICT MANAGEMENT *(Attach additional sheets as necessary)*

1. In FY09, the Army ADR Program delivered five 40-hour basic mediation courses to Army and other Service audiences at five different locations, conducted workshops for EEO directors, counselors, and labor attorneys at conferences in Kansas City and Atlanta, conducted mediation refresher and awareness training at multiple Army locations. The ADR program Office collaborated with the US Army Corps of Engineers' Institute for Water Resources in developing collaborative conflict management tools and helped update and revise IWR's extensive library of ADR publications and case studies.

2. Army Materiel Command (AMC) holds periodic video and teleconferences with contracting officers and legal personnel to encourage the use of ADR in resolving contract formation and administration issues. The HQ, AMC-Level Bid Protest Procedures appear in every AMC solicitation.

LESSONS LEARNED *(Attach additional sheets as necessary)*

- Describe lessons learned from use of ADR or conflict management
- Provide points of contact for each lesson

1. AMC has been able to eliminate further protest filings at either the GAO or Court of Federal Claims by resolving protest issues at the HQ, AMC level. None of these "local" protests handled at the HQ, AMC-Level were further appealed during FY 09. POC: Vera Meza, (703) 806-8758

2. One of the Corps of Engineers' ADR attempts was unsuccessful. In BPLW Architects & Engineers, Inc., the Corps attempted to process a pre-appeal ADR involving an affirmative \$7.6 million Government claim against the A/E. Corps counsel made a highly professional presentation, but counsel for the Contractor did not proceed in the spirit of cooperation that is involved in ADR. The Settlement Judge (Judge Monroe E. Freeman, Jr.) wrote a Letter of Commendation to the Corps' Chief Counsel in recognition of the professional presentation by the Corps. POC: Thomas H. Gourlay, Jr. (202) 761-8542
Charles L. Webster, (817) 886-1147

NARRATIVE *(Attach additional sheets as necessary)*

- Other information as appropriate, including a definition that differs from that described above.

1. The current draft of the ADR report, DD Form 2815, excludes dispute resolution data for five ADR methods: facilitation, ombuds, partnering, binding arbitration and summary trial with binding decision. Although we agree that that resolution data should not be used for "ombuds" activity because of the difficulty in defining what a resolution is—often it is simply a referral to another office or agency or process, which may end the matter for the ombuds, but does not necessarily "resolve" the matter. The same could be said for partnering, which is more a dispute avoidance mechanism than a dispute resolution process. In contrast, facilitation, when used in the context of a dispute, is similar to mediation in its tendency to produce a "resolution" in many, though not all disputes. Finally, binding arbitration and summary trial with binding decision in fact do "resolve" the disputes in which they are employed, even if not to the full satisfaction of one or more parties to the dispute. Accordingly, we recommend reinstating resolution data for facilitation, binding arbitration, and summary trial with binding decision.

2. Army would have reported at least an additional 46 contract disputes in which structured negotiations were used to reach resolution, but for the restrictive definition in the DD Form 2815 that suggests the requirement for a third-party neutral to qualify as an ADR event. We note that the Contract Disputes Act, as amended by the Administrative Dispute Resolution Act of 1996, appears to define ADR as any process adopted by the parties to resolve the dispute. We submit this should include structured negotiations. Moreover, we submit that any dispute that has been the subject of an ADR agreement should be included, whether or not the parties eventually resolved the matter before active third party neutral involvement.

3. The 6902 ombuds events reported under "Other" are ombuds contacts under the Army's Warriors in Transition Program.

4. Acquisition ADR events do not include GAO bid protests using outcome prediction, as Army activities that handle GAO bid protests (i.e., the Contract and Fiscal Law Division, AMC and the Corps of Engineers) have not been tracking them as ADR. Rather than have them attempt to reconstruct their data for FY09, we have advised them that while there is a good faith basis for considering outcome prediction at the GAO as not being an ADR process, the GAO considers it as such and the process seems to be consistent with the definitions of ADR used for this report. Accordingly, all have agreed to begin tracking such cases as ADR events and will include them in their FY10 ADR reports.

CONTACT INFORMATION FOR YOUR DISPUTE RESOLUTION SPECIALIST			
NAME <i>(Last, First, Middle Initial)</i> Norsworthy, Levator Jr.	TITLE Acting Principal Deputy General Counsel	TELEPHONE NUMBER <i>(Include area code)</i> (703) 697-9235	E-MAIL ADDRESS Levator.norsworthy@us.army.mil
REPORT PREPARED BY (IF DIFFERENT THAN THE DISPUTE RESOLUTION SPECIALIST)			
NAME <i>(Last, First, Middle Initial)</i> Van Nuys, Marc	SIGNATURE 	TELEPHONE NUMBER <i>(Include area code)</i> (703) 696-5240	DATE <i>(YYYYMMDD)</i> 20100115

ALTERNATIVE DISPUTE RESOLUTION (ADR) ANNUAL REPORT

INSTRUCTIONS

This form shall be used by all DoD Components to report their annual ADR Activity completed during each fiscal year. Each DoD Component should submit one collective report through their respective dispute resolution specialist. If the Reporting Component provides ADR services for other Components, list the serviced organizations in the narrative. Components that engage in ADR activity in EEO and/or environmental disputes, should attach a copy of the appropriate report.

Rows exist for ADR processes. Pick one process as the primary if more than one applies. Columns exist for subject categories. An **ADR event** is defined as a meeting or series of meetings between the disputing parties, jointly or individually, and a neutral or with input from a dispute resolution professional using one of the ADR methods to work towards resolution.

DEFINITIONS

Fiscal Year. As stated.

Reporting Component. Identify the DoD Component reporting.

EEO. Complete this column if your ADR program numbers differ from the EEOC Form 462.

Workplace (Labor-Management). Include grievances pursuant to a collective bargaining agreement (negotiated grievance procedure), unfair labor practices (ULPs), impasses, negotiability disputes and other undefined disputes addressed in a labor-management context.

Workplace (Other). Include grievances pursuant to an agency administrative grievance procedure, MSPB appeals, and other disputes between employees and management or between two or more employees.

Acquisition. Include ASBCA appeals, bid protests (agency and GAO), contract claims, and federal court cases.

Claims. Include federal tort claims, employee entitlements (e.g. travel claims), property damage claims, reports of survey, household goods loss and damage claims, medical-related and other claims against the Government.

Other (the Column). Specify in the Narrative section other areas where ADR was used in your Component. Note that workplace (EEO) and environmental conflict resolution data is requested separately on the form.

Total Number of ADR Events by Process. This number should be the sum of all numbers in the row.

Conciliation. A process in which a third party, called a conciliator, restores damaged relationships between disputing parties by bringing them together, clarifying perceptions, and pointing out misperceptions. This process often is used prior to other ADR processes, such as facilitation and mediation.

Mediation. A process in which parties are assisted by a neutral, called a mediator, who assists in establishing negotiating procedures, identifying issues in conflict, and defining options for resolution. Mediators are not vested with any decision making authority and cannot impose resolution on the parties; the parties make the decision themselves.

Early Neutral Evaluation. A process which involves informal presentation by the parties to a neutral with respected credentials for an oral or written evaluation of the parties' positions. The evaluation of the strengths and weaknesses of the parties' positions on a specific issue may be binding or non-binding.

Non-Binding Arbitration. A formal adversarial hearing before a neutral, called the arbitrator, with a relaxed evidentiary standard. The arbitrator is usually a subject matter expert. An arbitrator or an arbitration panel serves as a "private judge" to render an informed decision based on the merits of the dispute. The decision of the arbitrator is non-binding.

Settlement Judge/Conference. A judicial ADR process in which a judge hears the positions of the parties and provides them with a non-binding evaluation. The judge may attempt to mediate the resolution of the dispute or simply evaluate the strengths and weaknesses of each of the parties' positions.

Factfinding. The use of an impartial expert (or group) selected by the parties, by the agency, or by an individual with the authority to appoint a fact finder, in order to determine what the "facts" are in a dispute.

Review Panel. A problem-solving process where a dispute is presented to a group or panel for a decision before it becomes a formal complaint.

ALTERNATIVE DISPUTE RESOLUTION (ADR) ANNUAL REPORT *(Continued)*

Other (the Row). Provide the number of ADR events which used an ADR method not otherwise described on this Form. In the Narrative section on Page 2 provide a descriptor and definition of the method(s) used.

Total Number of ADR Events by Subject Matter. This number should be the sum of all numbers in the column.

Number of Resolutions Reached by ADR. Provide the number of resolutions reached by ADR, whether through a formal written settlement agreement or some less formal action, such as a handshake, or other agreement.

Percentage of ADR Cases Resolved By ADR. For each column, calculate by dividing the Number of Resolutions Reached by ADR by the Total Number of ADR Events by Subject Matter.

Facilitation. A process in which the neutral, called a facilitator, provides procedural assistance to parties engaged in interest-based negotiation. Facilitation efforts frequently do not produce written settlement agreements.

Ombudsman. A designated, impartial person receives complaints and questions from individuals concerning people within an entity, the functioning of an entity, or a program administered by the entity. An ombudsman works for the resolution of particular issues and, where appropriate, makes recommendations for the improvement of the general administration of the entities they serve.

Partnering. A formal process that brings key project participants (stakeholders) together with the aid of a facilitator to communicate effectively and work as a team in an orderly, efficient and progressive series of steps to identify problems, implement solutions, and resolve disputes.

Binding Arbitration. A formal adversarial hearing before a neutral, called the arbitrator, with a relaxed evidentiary standard. The arbitrator is usually a subject matter expert. An arbitrator or an arbitration panel serves as a "private judge" to render an informed decision based on the merits of the dispute. The decision of the arbitrator is binding (always the case in federal labor-management disputes). Although the Administrative Dispute Resolution Act authorizes binding ADR processes, an agency must have approved guidance prior to using a binding process unless there is other express statutory authority to conduct the binding process.

Summary Trial with Binding Decision. A judicial ADR process used by federal government Boards of Contract Appeals. In this process, the parties make a summary presentation to an administrative judge who renders a binding decision.

Conflict Management. A systemic process used to proactively manage conflict to reduce the incidence of disputes and to increase the likelihood that any disputes will be resolved efficiently, effectively, and expeditiously. Techniques used in the process include, but are not limited to, structured unassisted negotiation (e.g., use of interest-based negotiation techniques), joint problem-solving, and coaching.